



UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D.C. 20230

November 5, 1987 **DOCKET FILE COPY ORIGINAL**

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Rules and Policies on Foreign Participation in the U.S. Telecommunications
Market, IB Docket No. 97-142

Dear Secretary Caton:

Enclosed you will find an original and nine copies of a letter from Mr. Larry Irving, Assistant Secretary for Communications and Information, the National Telecommunications and Information Administration, U.S. Department of Commerce, to Chairman Kennard in the above-referenced proceeding. Please direct any questions you may have regarding this letter to the undersigned.

Thank you for your cooperation.

Respectfully submitted,

Kathy D. Smith
Acting Chief Counsel
National Telecommunications and
Information Administration

cc: Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Michael K. Powell
Commissioner Harold Furchtgott-Roth
Commissioner Gloria Tristani

15 of Copies rec'd
11/10/87

0+9



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Communications
and Information
Washington, D.C. 20230

NOV -5 1997 DOCKET FILE COPY ORIGINAL

Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Rules and Policies on Foreign Participation in the
U.S. Telecommunications Market, IB Docket No. 97-142

Dear Chairman Kennard:

NTIA is pleased to share its views regarding the Commission's pending proceeding to revise existing foreign entry rules.¹

The Effective Competitive Opportunities Test is No Longer Necessary.²

NTIA concurs with the Commission's assessment that it is no longer necessary to perform an equivalent competitive opportunities (ECO) analysis as part of its public interest assessment for applications from carriers affiliated with carriers in WTO member countries. Moreover, NTIA shares the Commission's belief that the WTO commitments made by 68 other governments will, when fully implemented, substantially achieve the goal of promoting effective competition in the international services market.³

As part of its public interest inquiry the Commission proposes to establish a "rebuttable presumption" in favor of granting a Section 214 application filed by a carrier from a WTO member country to provide international facilities-based, resold switched, or resold non-interconnected private

¹ *Rules and Policies on Foreign Participation in the U.S. Telecommunication Market*, Order and Notice of Proposed Rulemaking, IB Docket No 97-142, FCC 97-195 (rel. June 4, 1997) [hereinafter *Foreign Participation NPRM* or *NPRM*]. Unless otherwise indicated, all subsequent citations to "Comments" or "Reply comments" refer to pleadings filed in IB Docket 97-142.

² See *Market Entry and Regulation of Foreign-affiliated Entities*, Report and Order, FCC Docket No. 95-22, 11 FCC Rcd 3873 (1995), recon. pending, [hereinafter *Foreign Carrier Entry Order*].

³ We also share the Commission's belief that ECO will continue to be necessary with regard to applications from non-WTO countries.

line services. We recognize that the Commission intends this proposed approach to streamline the application process for foreign applicants from WTO member countries.

NTIA also commends the Commission for recognizing that some applications may pose such an unacceptable risk to competition that approval would not be in the public interest.⁴ In proposing to adopt a "very high risk to competition" standard, we assume the Commission is seeking to apply this standard only in the context of the possible denial of particular applications. NTIA strongly suggests that the Commission provide additional guidance to potential petitioners regarding the application of the "very high risk" standard for such purposes.⁵ NTIA also understands that the Commission intends to retain its existing "substantial risk"⁶ standard for purposes of determining whether particular applications warrant the application of specific competitive safeguards, including a determination of which safeguards would be appropriate to deter anti-competitive conduct. We concur with this approach, as the "substantial risk" standard has been an effective means of preventing a foreign carrier from using its foreign market power to the disadvantage of other carriers and U.S. consumers.⁷

NTIA supports the Commission's proposal to grant most applications for submarine cable landing licenses from WTO members, unless the State Department disapproves or the Commission determines there is some other compelling public interest reason for not doing so. We are also pleased that the Commission is prepared to apply specific conditions on cable landing licenses as necessary.⁸ In addition, NTIA supports the Commission's proposal that the ECO test be eliminated as part of its Section 310(b)(4) public interest analysis for common carrier radio licensees or applicants with foreign investment from WTO members, with a presumption that denial of the application would not serve the public interest.

⁴ See *NPRM*, *supra* note 1, ¶¶ 10, 32, 39, 45, & 75.

⁵ In this regard, we note that a number of U.S. carriers have raised questions regarding the introduction of the proposed "very high risk" standard for demonstrating anti-competitive harms. See WorldCom comments at 5-6, AT&T comments at 20-21, and Ameritech comments at 6-7.

⁶ See *NPRM* *supra* note 1, ¶¶ 86 & 103.

⁷ See *NPRM*, *supra* note 1, ¶ 90; see generally *NPRM* ¶ 26, and Section III (D)(1). see also *Foreign Carrier Entry Order*, *supra* note 2, ¶¶ 5, 109, 230, & 247; *Regulation of International Common Carrier Services*, Report and Order, 7 FCC Rcd 7331, ¶¶ 6, 11, & 31 (1992) [hereinafter *International Services*].

⁸ See U.S. Department of Defense reply comments at 6-7 (supporting notion that FCC continue to include national security concerns as part of its public interest review).

The Public Interest Can be Maintained Through the Application of Appropriate Safeguards.

NTIA believes the FCC can rely on other regulatory mechanisms to address remaining concerns regarding possible anti-competitive behavior. Specifically, NTIA agrees that it is imperative that the Commission apply regulatory safeguards to prevent anti-competitive behavior in order to promote the public interest. We also believe the Commission's proposed approach is consistent with the WTO agreement.⁹

NTIA supports the Commission's proposed safeguards for prevention of anti-competitive effects in the United States, including: dominant carrier regulation for carriers with foreign affiliates that have market power; possible structural separation (or non-structural safeguards such as separate accounts); no special concessions conditions; and benchmark settlement rates conditions. NTIA also supports the Commission's intention to impose specific and significant sanctions on foreign-affiliated carriers that engage in anti-competitive conduct in the U.S. market.¹⁰

NTIA believes the Commission should clarify the application of its new rules and competitive safeguards to applicants seeking to provide international switched resale services, particularly in those cases where authorization is sought for service to markets where the applicant is affiliated with the incumbent, dominant provider of facilities and services.¹¹ As the Commission stated in the *Foreign Carrier Entry Order*: "a foreign carrier's ability to provide switched service via resale to a closed market where it possesses market power will provide that carrier with an unfair advantage in marketing global network services. Such unmeritorious advantages create a risk of anti-competitive effects in the emerging market for global network solutions."¹² While NTIA concurs with the Commission's assessment that the ability to market service on an end-to-end basis via resold U.S. circuits does not provide as great a potential for anti-competitive effects in the U.S. international services market as does facilities-based entry,¹³ we believe the Commission has appropriately continued to recognize the potential for anti-competitive practices related to the provisioning of

⁹ See Comments of the United States Trade Representative (USTR) at 2 (noting that the U.S. and 55 other countries also committed to a specific set of pro-competitive regulatory principles) and USTR reply comments generally.

¹⁰ See *Foreign Participation NPRM*, *supra* note 1, ¶¶ 124-127.

¹¹ See generally *NPRM*, *supra* note 1, Sections III(A)(1)(a) & III(D).

¹² See *Foreign Carrier Entry Order*, *supra* note 2, ¶¶ 142-146. As a result, the Commission determined that it would apply the equivalent competitive opportunities test to those applicants seeking to provide international service via switched resale to markets in which they possess market power.

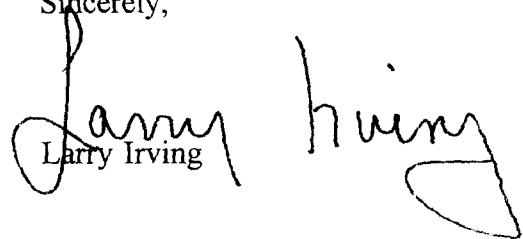
¹³ See *NPRM*, *supra* note 1, ¶ 31 (citing *Foreign Carrier Entry Order* ¶ 143). See also *International Services*, *supra* note 5, ¶¶ 31-32.

switched resale to those markets where there is an affiliation with an incumbent with market power.¹⁴

In addition, NTIA would expect the Commission to scrutinize much more closely applications for switched resale involving an affiliation with an entity possessing market power in the foreign market, as well as an affiliation with the underlying U.S.-facilities based carrier whose service would be resold. It is in those cases where an applicant is affiliated with facilities-based carriers at both ends of a route that there appears to be both greater incentive and ability to engage in anti-competitive behavior. In response to these cases, NTIA believes the Commission should be prepared to apply safeguards, if necessary and as appropriate, to prevent anti-competitive effects on the U.S. market and consumers.

Finally, NTIA supports the Commission's stated intention to continue to accord deference to Executive Branch agencies with regard to national security, law enforcement, foreign policy, or trade concerns.¹⁵

Sincerely,


Larry Irving

cc: Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael K. Powell
Commissioner Gloria Tristani

¹⁴ For example, in a 1996 Order the Commission deferred action on a portion of a GTE application involving the provision of switched resale services to the Dominican Republic and Venezuela, because the FCC was concerned that GTE might be able to use the market power of its foreign carrier affiliates "in ways that directly undermine the public interest in an effectively competitive U.S. international services market." See *In the Matter of GTE Telecom Inc.*, Order, Authorization and Certificate, ITC-95-443, DA 96-1546 (rel. Sept. 16, 1996), ¶¶ 2, 34, & 43-45 (finding that the application to resell international switched services to the Dominican Republic and Venezuela raised issues relating to the settlements process that must be resolved before any there was any resolution that the public interest would be served by granting the license for those affiliated routes).

¹⁵ See *Foreign Participation NPRM*, *supra* note 1, ¶¶ 43, 64, & 74.

CERTIFICATE OF SERVICE

I, Cathleen K. Wasilewski, do hereby certify that a copy of the foregoing Letter from the National Telecommunications and Information Administration was hand delivered (*) or sent via first class United States mail, on this 5th day of November, 1997, to the following:

Cathleen K. Wasilewski

* Ms. Regina Keeney, Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 800
Washington, DC 20554

* Diane J. Cornell
Chief, Telecommunications Division
International Bureau
Federal Communications Commission
Room 800
2000 M Street, NW
Washington, DC 20554

* Mr. Douglas A. Klein
International Bureau
Federal Communications Commission
Room 800
2000 M Street, NW
Washington, DC 20554

* International Transcription Service
Suite 140
2100 M Street, NW
Washington, DC 20037

Ambassador Jeffrey M. Lang
Deputy U.S. Trade Representative
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Mr. Donald Abelson
Chief Negotiator for Communication &
Information
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Mr. William Corbett
Director for Services & Telecommunications
Office of Services, Investment and Intellectual
Property
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Ambassador Vonya B. McCann
Bureau of International Communications and
Information Policy
U.S. Department of State
Room 4826
2201 C Street, N.W.
Washington, D.C. 20520-1428

Ms. Robin R. Layton
ITA
U.S. Department of Commerce
Room 4324
14th Street & Constitution Ave., NW
Washington, D.C. 20230

Mr. Richard Beaird
Bureau of International Communications and
Information Policy
U.S. Department of State
Room 4836
2201 C Street, N.W.
Washington, D.C. 20520-1428

The Honorable John Dalton
Secretary of the Navy
Office of the Secretary
Department of the Navy
The Pentagon
Rm. 4E686
Washington, D.C. 20350

Office of General Counsel
National Security Agency
9800 Savage Road
Fort Meade, MD 20755-6000

Mr. John L. Bartlett
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006-2304
Attorneys for
Aeronautical Radio, Inc.

Mr. Mark C. Rosenblum
Mr. Lawrence J. Lafaro
Mr. James J.R. Talbot
AT&T Corporation
295 N. Maple Avenue
Room 3252H3
Basking Ridge, NJ 07920

Mr. Michael K. Kellogg
Mr. Austin C. Schlick
Kellogg, Huber, Hansen, Todd & Evans
1301 K Street NW
Suite 1000 West
Washington, DC 20005
Attorneys for BellSouth Corporation

Hogan & Hartson LLP
Columbia Square
555 Thirteenth Street NW
Washington, DC 20004-1109
Attorneys for
BT North America, Inc.

Dr. James E. Soos
Deputy Assistant Secretary
of Defense for C3
Room 3E194
6000 Defense Pentagon
Washington, D.C. 20301-6000

Mr. Keith H. Fagan
COMSAT Communications
6560 Rockspring Drive
Bethesda, MD 20817

Mr. Frank Michael Panek
Ameritech
Room 4H84
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Mr. William B. Barfield
Mr. David G. Richards
BellSouth Corporation
1155 Peachtree Street NE
Atlanta, GA 30309

Ms. Cheryl Lynn Schneider
BT North America, Inc.
North Building
Suite 725
601 Pennsylvania Avenue, NW
Washington, DC 20004

Ms. Madeline Elizabeth Wall
Cable & Wireless
124 Theobalds Road
London WC1X 8RX
United Kingdom

Mr. Philip V. Permut
Ms. Joan M. Griffin
Kelley Drye & Warren LLP
1200 19th Street NW
Suite 500
Washington, DC 20036
Attorneys for Cable & Wireless, Inc.

Mr. Hans-Willi Hefekauser
Deutsche Telekom AG
Friedrich-Ebert-Allee 140
Bonn
Germany

Mr. Robert J. Aamoth
Ms. Joan M. Griffin
Kelley Drye & Warren LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036
Attorneys for Deutsche Telekom

Ms. Margaret M. Charles
Ms. Maria L. Cattafesta
Swidler & Berlin, Chartered
3000 K Street, NW
Suite 300
Washington, DC 20007
Attorneys for FaciliCom International LLC

Mr. Theodore W. Krauss
Ms. Danielle K. Aguto
France Telecom North America
555 13th Street NW
Suite 1100 East
Washington, DC 20004

Mr. Gerard Moine
Ms. Alaine-Louis Mie
Ms. Jean-Louis Burillon
France Telecom
Public Affairs Directorate
6, Place d'Alleray
7505 Paris Cedex 15
France

Ms. Rebecca S. Weeks
Mr. Carl Wayne Smith
Defense Information Systems
Agency
701 S. Courthouse Road
Arlington, VA 22204

A. Bradley Shingleton
Deutsche Telekom, Inc.
1020 19th Street, NW
Suite 850
Washington, DC 20036

Junichiro Miyazaki
Counselor of Embassy of Japan
Embassy of Japan
2520 Massachusetts Avenue, NW
Washington, DC 20008

Mr. John F. Lewis, Jr.
Assistant Director in Charge
National Security Division
U.S. Department of Justice
Federal Bureau of Investigation
Washington, DC 20535

Mr. Jeffrey P. Cunard
Debevoise & Plimpton
555 13th Street NW
Suite 1100 East
Washington, DC 20004
Attornys for France Telecom

Mr. Michael J. Shortley, III
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646

Ms. Gail Polivy, Esq.
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, DC 20036

Mr. Ward W. Wueste
GTE Service Corporation
One Stamford Forum
Stamford, CT 06904

Mr. R. Michael Senkowski
Mr. John B. Reynolds, III
Mr. Todd D. Daubert
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006
Attys for GTE Service Corporation

Mr. Kailas J. Rao
Mr. Richard E. Kinder, Jr.
Mr. Michael J. Flanigan
INDUS, Inc.
777 East Wisconsin Avenue
Suite 1900
Milwaukee, WI 53202

Mr. Philip L. Verveer
Ms. Jennifer A. Donaldson
Mr. Gunnar D. Halley
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036
Attys for INDUS, Inc.

Mr. Robert J. Aamoth & Ms. Joan M. Griffin
Kelley Drye & Warren LLP
1200 19th Street NW
Suite 500
Washington, DC 20036
Attys for Kokusai Denshin
Denwa Co. Ltd.

Mr. Sanford C. Reback
Mr. Larry Blosser
Ms. Carol R. Schultz
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Ms. Janice Obuchowski
Mr. Michael Wack
Next Wave Telecom Inc.
1101 Pennsylvania Ave. NW
Suite 805
Washington, DC 20005

Kevin McGilly
Rohit Menezes
Freedom Technologies, Inc.
1100 New York Avenue, NW
Suite 650 East Tower
Washington, DC 20005

Consultants to Next Wave Personal
Communications Inc.
Nippon Telegraph and Telephone
Corporation
Tokyo Opera City Tower
20-2 Nishi-Shinjuku 3-chrome
Shinjuku-ku Tokyo
163-14 Japan

Mr. Christopher M. Bennett
NYNEX Long Distance Company
1095 Avenue of the Americas
Room 3828
New York, NY 10036

Wei Fong
Pacific Communications Services Co.
20th Floor
160 Jen ai Road Sec.4
Taipei, 106, Taiwan

Mr. Henry Goldberg
Mr. Joseph A. Godles
Ms. Mary Dent
Goldberg, Godles, Weiner & Wright
1229 Nineteenth Street, NW
Washington, DC 20036
Attorneys for Panamsat Corporation

Mr. Stanley J. Moore
SBC Communications Inc.
5850 W. Las Positas Blvd.
Pleasanton, CA 94588

Mr. Albert Halprin
Mr. Randall Cook
Halprin, Temple, Goodman & Sugrue
Suite 650 East Tower
100 New York Avenue, NW
Washington, DC 20005
Attorneys for SITA

NG Cher Keng
Telecommunication
Authority of Singapore
35 Robinson Road
TAS Building
Singapore 0106

Mr. Alfred M. Mamlet
Mr. Maury D. Shenk
Ms. Collen A. Sechrest
Steptoe & Johnson LLP
1330 Connecticut Avenue NW
Washington, DC 20036
Attys for Telefonica Internacional
de Espana, S.A.

Mr. Gary M. Epstein
Ms. Teresa D. Baer
Latham & Watkins
1001 Pennsylvania Avenue, N W
Washington, DC 20004
Attys for Telefonos De Mexico

Mr. James D. Ellis
Mr. Robert M. Lynch
Mr. Timothy P. Leahy
SBC Communications, Inc.
175 E. Houston
Room 1254
San Antonio, TX 78205

Mr. Wayne V. Black
Mr. C. Douglas Jarrett
Mr. Brian Turner Ashby
Keller and Heckman LLP
1001 G Street NW
Suite 500 West
Washington, DC 20001
Attys for Shell Offshore Services Company

Mr. Kent Y. Nakamura
Mr. Leon M. Kestenbaum
Sprint Corp.
1850 M Street, NW
11th Floor
Washington, DC 20036

Mr. J. Jeffrey Craven
Mr. Jeffrey L. Ross
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037
Attys for Telecom Finland, LTD

Luis Lopez-van Dam
General Secretary
Telefonica Internacional
De Espana, S.A.
Jorge Manrique, 12
Madrid 28006
Spain

Mr. George Y. Wheeler
Koteen & Naftalin LLP
1150 Connecticut Avenue, NW
Suite 1000
Washington, DC 20036
Attys for Telephone and Data
Systems, Inc.

Mr. Gregory C. Staple
Mr. R. Edward Price
Koteen & Naftalin LLP
1150 Connecticut Avenue, NW
Suite 1000
Washington, DC 20036
Attys for TELSTRA, Inc.

Ms. Mary McDermott
Ms. Linda Kent
Mr. Keith Townsend
Mr. Hance Haney
United States Telephone Association
1401 H Street, NW
Suite 600
Washington, DC 20005

Ms. Aileen A. Pisciotta
Ms. Joan M. Griffin
Kelley Drye & Warren LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036
Attorneys for Viatel, Inc.

Mr. Paul J. Sinderbrand
Mr. William W. Huber
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, NW
Washington, DC 20006
Attorneys for The Wireless Cable
Association International, Inc.

Mr. Robert S. Koppel
VP-Legal & Regulatory
Affairs
Worldcom
15245 Shady Grove Road
Suite 460
Rockville, MD 20850-3222

Mr. Daniel L. Poole
US West, Inc.
1801 California Street
Suite 5100
Denver, CO 80202

Mr. Sheldon M. Goldman
Vice President
Viatel, Inc.
800 Third Avenue
New York, NY 10022

Mr. Timothy R. Graham
Mr. Leo I. George
Mr. Joseph M. Sandri, Jr.
Mr. Barry J. Ohlson
Winstar Communications Inc.
1146 19th Street, NW
Suite 200
Washington, DC 20036

European Union
Delegation of the European Commission
2300 M Street NW
Washington, DC 20037

Ms. Catherine Wang
Swidler & Berlin, Chartered
3000 K Street, NW
Suite 300
Washington, DC 20007
Attorney for Worldcom